

MAY 27 2003

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

CATHY A. CATTERSON

U.S. COURT OF APPEALS

FOR THE NINTH CIRCUIT

VIRTUAL MEDIA GROUP, INC.;
VALLEY OUTDOOR, INC.,

Plaintiffs - Appellants,

v.

CITY OF SAN MATEO, a California
municipal corporation,

Defendant - Appellee,

OUTDOOR MEDIA GROUP; JUNG
CHOO; ALBERT AUBRY; COREY
FAULKNER,

Counter-defendants - Appellants.

No. 02-15926

D.C. No. CV-01-01089-MMC

MEMORANDUM*

Appeal from the United States District Court
for the Northern District of California
Maxine M. Chesney, District Judge, Presiding

Argued and Submitted May 14, 2003
San Francisco, California

Before: CANBY, KLEINFELD, and RAWLINSON, Circuit Judges.

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

Virtual Media Group, Inc., Valley Outdoor, Inc., Outdoor Media Group, Albert Aubrey, Jung Chou and Corey Faulkner (“Appellants”) appeal the district court’s grant of summary judgment in favor of the City of San Mateo. We have jurisdiction pursuant to 28 U.S.C. § 1291, and we affirm.¹

Appellants’ billboards do not qualify as legal, non-conforming uses under § 25.04.060 of the new San Mateo sign ordinance because the billboards were constructed in violation of § 23.06 of the San Mateo Municipal Code, which required Appellants to obtain building and electrical permits prior to construction.² Appellants’ argument that applying for such permits would have been futile is not supported by sufficient evidence.

The decision of the district court is AFFIRMED.

¹ We also grant San Mateo’s November 28, 2002, motion to strike documents impermissibly included in Appellants’ Excerpts of Record. *See Krishner v. Uniden Corp. of America*, 842 F.2d 1074, 1077-78 (9th Cir. 1988) (stating that papers submitted to the district court after the ruling that is challenged on appeal should be stricken from the record on appeal).

² San Mateo alleges that Appellants’ billboards also violated structural and electrical safety requirements set out by the code. Appellants have not presented any defense to this assertion. Our decision does not depend on this allegation, however, because Appellants’ billboards admittedly violated the building code’s permit requirements.